

Record

OLL: 84-0618/2



## CENTRAL INTELLIGENCE AGENCY

Office of Legislative Liaison

Washington, D. C. 20505

Telephone [redacted]

13 February 1984

STAT

**TO:** Ms. Mary Lawton  
 Counsel for Intelligence Policy  
 Office of Intelligence Policy and Review  
 Department of Justice, Room 6325  
 Washington, D.C. 20530

Dear Mary:

Here is a draft produced by the HPSCI  
 staff after the hearings. At first  
 blush, it looks pretty good. Let's  
 talk about it.

Sincerely,

Deputy Director

FORM  
3-79

1533

OBSOLETE  
PREVIOUS  
EDITIONS.

(40)

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STAT



Washington, D.C. 20505

OLL: 84-0618/3  
13 February 1984

Richard K. Willard, Esquire  
Acting Assistant Attorney General  
Civil Division  
Department of Justice  
Washington, D.C. 20530

Dear Richard:

STAT The hearings on our FOIA Bill before the HPSCI on 8 February went surprisingly well. The bottom line was pronounced by Chairman Boland toward the end of the hearing in which he said that a bill will definitely come out of this Committee. The only real controversy--and one that was examined constantly throughout the five hours of hearings--was scope of judicial review. It became absolutely clear that a bill that is silent on judicial review (as the original Mazzoli Bill was) would not succeed. The reason for this is that the testimony of Mary Lawton, [redacted] and myself made clear that we preferred no judicial review. And since the Mazzoli Bill, as introduced, would enable us to so argue, such a Bill will not be reported out. Chairman Mazzoli and, indeed, all the Members that commented on the issue made it clear that some sort of judicial review provision was a non-negotiable item. In this connection, the FOIA standard of de novo became a buzz word with which there appeared to be no willingness to compromise. Because the Senate version, on its face, seemed to do away with the de novo concept, it was found unacceptable. The compromise draft enclosed at Tab A, at first blush, seems acceptable. It incorporates the de novo standard of the FOIA by reference in Section 701(f), but at the same time severely limits the court's actions in subsections (f)(1)-(4). I particularly like (f)(2) because that had been our greatest concern. (f)(3)(B) is another motherhood provision because all the Members felt very strongly that we should not deprive the court of its right to look at documents. We heard the same strongly expressed sentiment by Senator Leahy at the time of the Senate process. As long as the court's look at documents can happen only sua sponte, I am not too concerned.

Since this Bill is on a very fast track, I would appreciate your sharing it with your FOIA experts and get in touch with me.

At Tab B are copies of the Goldwater Bill as passed by the Senate and the original Mazzoli Bill.

Sincerely,

[Redacted Signature]

Deputy Director, Office of Legislative Liaison

Enclosures

cc: [Redacted] Counsel for  
Intelligence Policy

Distribution:  
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DD/OLL:EM:m1g (13 Feb 1984)

*Tab A*

HPSCI Staff Discussion Draft No. 1

98TH CONGRESS  
1ST SESSION

# H. R. 3460

(Note: the two portions marked by asterisks are in substantial disagreement)

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1983

Mr. MAZZOLI introduced the following bill; which was referred jointly to the Permanent Select Committee on Intelligence and the Committee on Government Operations

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## A BILL

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Intelligence Information  
4 Act of 1983".

5 SEC. 2. (a) The National Security Act of 1947 is  
6 amended by adding at the end thereof the following new title:

1 "TITLE VII—RELEASE OF REQUESTED INFORMA-  
 2 TION TO THE PUBLIC BY THE CENTRAL IN-  
 3 TELLIGENCE AGENCY

4 EXEMPTION OF CERTAIN OPERATIONAL FILES FROM  
 5 SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE

6 "SEC. 701. (a) Operational files located in the Director-  
 7 ate of Operations, Directorate for Science and Technology,  
 8 and Office of Security of the Central Intelligence Agency  
 9 may be exempted by the Director of Central Intelligence  
 10 shall be exempted from the provisions of the Freedom of In-  
 11 formation Act which require publication or disclosure, or  
 12 search or review in connection therewith.

13 "(b) Subsection (a) of this section shall not prevent the  
 14 search and review of operational files for information con-  
 15 cerning—

16 "(1) United States citizens or aliens lawfully ad-  
 17 mitted for permanent residence who have requested in-  
 18 formation on themselves pursuant to the provisions of  
 19 or the Privacy Act of 1974 (5 U.S.C. 552a)  
 20 the Freedom of Information Act (5 U.S.C. 552);

21 "(2) any special activity the existence of which is  
 22 not exempt from disclosure under the provisions of the  
 23 Freedom of Information Act;

24 "(3) the subject of an investigation by the intelligence  
 25 committees of the Congress, the Intelligence  
 26 the Department of Justice  
 27 Oversight Board, the Office of General Counsel of the  
 28 Central Intelligence Agency, the Office of Inspector  
 29 for any impropriety, or violation of  
 30 law, Executive order,  
 31 or Presidential dir-  
 32 ective in the conduct  
 33 of an intelligence  
 34 activity

1 General of the Central Intelligence Agency, or the  
 2 Office of the Director of Central Intelligence. ~~for any--~~  
 3 ~~impropriety, or violation of law, Executive order, or--~~  
 4 ~~Presidential directive in the conduct of an intelligence--~~  
 5 ~~activity.~~

\* [(4) Domestic Organizations ]

6 (c) The provisions of subsection (a) of this section shall  
 7 not be superseded except by a provision of law which is en-  
 8 acted after the date of enactment of subsection (a), and which  
 9 specifically cites and repeals or modifies its provisions.

10 "(d) For the purposes of this title the term 'operational  
 11 files' means ~~those files which document--~~

12 [(1) files of the Directorate of Operations which  
 13 document foreign intelligence or counterintelligence op-  
 14 erations or intelligence or security liaison arrangements  
 15 or information exchanges with foreign governments or  
 16 their intelligence or security services;

17 [(2) files of the Directorate for Science and Tech-  
 18 nology which document the means by which foreign in-  
 19 telligence or counterintelligence is collected through  
 20 scientific and technical systems; or

21 [(3) files of the Office of Security which document  
 22 investigations conducted to determine the suitability of  
 23 potential foreign intelligence or counterintelligence  
 24 sources .

Senate bill  
 (def'n's)

1       “(e)(1) Nonoperational files which contain information  
2 derived or disseminated from<sup>exempted</sup> operational files shall be subject  
3 to search and review.

4       “(2) The inclusion of information from<sup>exempted</sup> operational files  
5 in nonoperational files shall not affect the exemption under  
6 subsection (a) of this section of the originating operational  
7 files from search, review, publication, or disclosure.”.

8       “(f) Action by the Central Intelligence Agency pursuant to this  
9 section shall be subject to review in accordance with subparagraph  
552(a)(4)(B) of Title 5, subject to the following requirements--

\* [

10       “(1) the complainant shall bear the burden of going forward  
with evidence, by sworn written submission filed and served with the  
complaint, that Agency action is not in conformity with this section;

11 ]

12       “(2) the parties shall not obtain discovery, Rules 26 through  
13 35 of the Federal Rules of Civil Procedure to the contrary notwith-  
14 standing;

15       “(3)(A) the court shall, to the fullest extent practicable,  
determine issues of fact based on sworn written submissions of  
the parties, and (B) if necessary to decision, the court may  
examine the contents of operational files; and

      “(4) information specifically authorized under criteria  
established by an Executive order to be kept secret in the interest  
of national defense or foreign policy which is filed with, or  
produced for, the court by the Central Intelligence Agency shall  
be examined ex parte, in camera by the court.

"(g)(1) Not less than once every ten years, the Director of Central Intelligence shall reconsider the exemptions in force under subsection (a) of this section to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

"(2) The reconsideration required by paragraph (1) of this subsection shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

**"TITLE VII—RELEASE OF REQUESTED INFORMATION TO THE PUBLIC BY  
THE CENTRAL INTELLIGENCE AGENCY**

**"Sec. 701. Exemption of certain operational files from search, review, publication, or disclosure."**

SEC. 3. The Director of Central Intelligence, in consultation with the Archivist of the United States, the Librarian of Congress, and appropriate representatives of the historical discipline selected by the Archivist, shall prepare and submit by June 1, 1985 to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report on the feasibility of conducting systematic review and release of Central Intelligence Agency information of historical value.



**SEC. 3.** The amendments made by section 2 shall be effective upon enactment of this Act and shall apply with respect to any requests for records, whether or not such request was made prior to such enactment, and shall apply to <sup>civil actions not commenced prior to February 7, 1984.</sup> ~~all cases and proceedings pending before a court of the~~ ~~United States on the date of such enactment.~~

○

I

# S. 1324

**Referred jointly to the Permanent Select Committee on Intelligence and the  
Committee on Government Operations**

# AN ACT

**To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency.**

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Intelligence Information  
4       Act of 1983".

## FINDINGS AND PURPOSES

6 SEC. 2. (a) The Congress finds that—

7 (1) the Freedom of Information Act is providing  
8 the people of the United States with an important

1 means of acquiring information concerning the workings and  
2 decisionmaking processes of their Government, including the  
3 Central Intelligence Agency;

4 (2) the full application of the Freedom of Informa-  
5 tion Act to the Central Intelligence Agency is, howev-  
6 er, imposing unique and serious burdens on this  
7 Agency;

8 (3) the processing of a Freedom of Information  
9 Act request by the Central Intelligence Agency nor-  
10 mally requires the search of numerous systems of  
11 records for information responsive to the request;

12 (4) the review of responsive information located in  
13 operational files which concerns sources and methods  
14 utilized in intelligence operations can only be accom-  
15 plished by senior intelligence officers having the neces-  
16 sary operational training and expertise;

17 (5) the Central Intelligence Agency must fully  
18 process all requests for information, even when the re-  
19 quester seeks information which clearly cannot be re-  
20 leased for reasons of national security;

21 (6) release of information out of operational files  
22 risks the compromise of intelligence sources and  
23 methods;

24 (7) eight years of experience under the amended  
25 Freedom of Information Act has demonstrated that this

1     time-consuming and burdensome search and review of  
2     operational files has resulted in the proper withholding  
3     of information contained in such files, and, therefore,  
4     the Central Intelligence Agency should no longer be  
5     required to expend valuable manpower and other re-  
6     sources in the search and review of information in  
7     these files;

8           (8) the full application of the Freedom of Informa-  
9     tion Act to the Central Intelligence Agency is per-  
10    ceived by those who cooperate with the United States  
11    Government as constituting a means by which their co-  
12    operation and the information they provide may be  
13    disclosed;

14          (9) information concerning the means by which in-  
15    telligence is gathered generally is not necessary for  
16    public debate on the defense and foreign policies of the  
17    United States, but information gathered by the Central  
18    Intelligence Agency should remain accessible to re-  
19    questers, subject to existing exemptions under law;

20          (10) the organization of Central Intelligence  
21    Agency records allows the exclusion of operational files  
22    from the search and review requirements of the Free-  
23    dom of Information Act while leaving files containing  
24    information gathered through intelligence operations

1 accessible to requesters, subject to existing exemptions  
2 under law; and

3 (11) the full application of the Freedom of Infor-  
4 mation Act to the Central Intelligence Agency results  
5 in inordinate delays and the inability of the Agency to  
6 respond to requests for information in a timely fashion.

7 (b) The purposes of this Act are—

8 (1) to protect the ability of the public to request  
9 information from the Central Intelligence Agency  
10 under the Freedom of Information Act to the extent  
11 that such requests do not require the search and  
12 review of operational files;

13 (2) to protect the right of individual United States  
14 citizens and permanent resident aliens to request infor-  
15 mation on themselves contained in all categories of  
16 files of the Central Intelligence Agency; and

17 (3) to provide relief to the Central Intelligence  
18 Agency from the burdens of searching and reviewing  
19 operational files, so as to improve protection for intelli-  
20 gence sources and methods and enable this Agency to  
21 respond to the requests of the public for information in  
22 a more timely and efficient manner.

23 SEC. 3. (a) The National Security Act of 1947 is  
24 amended by adding at the end thereof the following new title:

1 **"TITLE VII—RELEASE OF REQUESTED INFORMA-**  
2 **TION TO THE PUBLIC BY THE CENTRAL IN-**  
3 **TELLIGENCE AGENCY**

4 **"DESIGNATION OF FILES BY THE DIRECTOR OF CENTRAL**  
5 **INTELLIGENCE AS EXEMPT FROM SEARCH, REVIEW,**  
6 **PUBLICATION, OR DISCLOSURE**

7 **"SEC. 701. (a) In furtherance of the responsibility of the**  
8 **Director of Central Intelligence to protect intelligence**  
9 **sources and methods from unauthorized disclosure as set**  
10 **forth in section 102(d)(3) of this Act (50 U.S.C. 403(d)(3))**  
11 **and section 6 of the Central Intelligence Agency Act of 1949**  
12 **(50 U.S.C. 403g), operational files located in the Directorate**  
13 **of Operations, Directorate for Science and Technology, and**  
14 **Office of Security of the Central Intelligence Agency shall be**  
15 **exempted from the provisions of the Freedom of Information**  
16 **Act which require publication or disclosure, or search or**  
17 **review in connection therewith, if such files have been spe-**  
18 **cifically designated by the Director of Central Intelligence to**  
19 **be—**

20 **"(1) files of the Directorate of Operations which**  
21 **document foreign intelligence or counterintelligence op-**  
22 **erations or intelligence or security liaison arrangements**  
23 **or information exchanges with foreign governments or**  
24 **their intelligence or security services; or**

1           “(2) files of the Directorate for Science and Tech-  
2           nology which document the means by which foreign in-  
3           telligence or counterintelligence is collected through  
4           scientific and technical systems; or

5           “(3) files of the Office of Security which document  
6           investigations conducted to determine the suitability of  
7           potential foreign intelligence or counterintelligence  
8           sources:

9   *Provided, however,* That nondesignated files which may con-  
10   tain information derived or disseminated from designated  
11   operational files shall be subject to search and review. The  
12   inclusion of information from operational files in nondesignat-  
13   ed files shall not affect the designation of the originating  
14   operational files as exempt from search, review, publication,  
15   or disclosure: *Provided further,* That the designation of any  
16   operational files shall not prevent the search and review of  
17   such files for information concerning any special activity the  
18   existence of which is not exempt from disclosure under the  
19   provisions of the Freedom of Information Act or for informa-  
20   tion reviewed and relied upon in an investigation by the intel-  
21   ligence committees of the Congress, the Intelligence Over-  
22   sight Board, the Office of General Counsel of the Central  
23   Intelligence Agency, the Office of Inspector General of the  
24   Central Intelligence Agency, or the Office of the Director of  
25   Central Intelligence for any impropriety, or violation of law,

1 Executive order, or Presidential directive in the conduct of  
2 an intelligence activity.

3       “(b) The provisions of this section shall not be superseded  
4 ed except by a provision of law which is enacted after the  
5 date of enactment of this section and which specifically cites  
6 and repeals or modifies its provisions.

7       “(c) Notwithstanding subsection (a) of this section,  
8 proper requests by United States citizens, or by aliens law-  
9 fully admitted for permanent residence in the United States,  
10 for information concerning themselves, made pursuant to the  
11 Privacy Act of 1974 (5 U.S.C. 552a) or the Freedom of In-  
12 formation Act (5 U.S.C. 552), shall be processed in accord-  
13 ance with those Acts.

14       “(d) The Director of Central Intelligence shall promul-  
15 gate regulations to implement this section.

16       “(1) Such regulations shall require the appropriate  
17 Deputy Directors or Office Head to—

18               “(A) specifically identify categories of files under  
19 their control which they recommend for designation;

20               “(B) explain the basis for their recommendations;  
21 and

22               “(C) set forth procedures consistent with the stat-  
23 utory criteria in subsection (a) which would govern the  
24 inclusion of documents in designated files.



1 Recommended designations, portions of which may be classi-  
2 fied, shall become effective upon written approval of the  
3 Director of Central Intelligence.

4       “(2) Such regulations shall further provide procedures  
5 and criteria for the review of each designation not less than  
6 once every ten years to determine whether such designation  
7 may be removed from any category of files or any portion  
8 thereof. Such criteria shall include consideration of the his-  
9 torical value or other public interest in the subject matter of  
10 the particular category of files or portion thereof and the po-  
11 tential for declassifying a significant part of the information  
12 contained therein.

13       “(e)(1) On the complaint under section 552(a)(4)(B) of  
14 title 5, United States Code, that the Agency has improperly  
15 withheld records because of improper designation of files or  
16 improper placement of records solely in designated files, the  
17 review of the district court, notwithstanding any other provi-  
18 sion of law shall be limited to a determination whether the  
19 Agency regulations implementing subsection (a) conform to  
20 the statutory criteria set forth in that subsection for designat-  
21 ing files unless the complaint is supported by an affidavit,  
22 based on personal knowledge or otherwise admissible evi-  
23 dence, which makes a prima facie showing that—

24       “(A) a specific file containing the records re-  
25       requested was improperly designated; or

1           “(B) the records requested were improperly placed  
2           solely in designated files.

3 If the court finds a prima facie showing has been made under  
4 this subsection, it shall order the Agency to file a sworn re-  
5 sponse, which may be filed in camera and ex parte, and the  
6 court shall make its determination based upon these submis-  
7 sions and submissions by the plaintiff. If the court finds under  
8 this subsection that the regulations of the Agency implement-  
9 ing subsection (a) of this section do not conform to the statu-  
10 tory criteria set forth in that subsection for designating files,  
11 or finds that the Agency has improperly designated a file or  
12 improperly placed records solely in designated files, the court  
13 shall order the Agency to search the particular designated  
14 file for the requested records in accordance with the provi-  
15 sions of the Freedom of Information Act and to review such  
16 records under the exemptions pursuant to section 552(b) of  
17 title 5, United States Code. If at any time during such pro-  
18 ceedings the Agency agrees to search designated files for the  
19 requested records, the court shall dismiss the cause of action  
20 based on this subsection.

21           “(2) On complaint under section 552(a)(4)(B) of title 5,  
22 United States Code, that the Agency has improperly with-  
23 held records because of failure to comply with the regulations  
24 adopted pursuant to subsection (d)(2), the review of the court

1 shall be limited to determining whether the Agency consid-  
2 ered the criteria set forth in such regulations.”

3 (b) The table of contents at the beginning of such Act is  
4 amended by adding at the end thereof the following:

**“TITLE VII—RELEASE OF REQUESTED INFORMATION TO THE  
PUBLIC BY THE CENTRAL INTELLIGENCE AGENCY**

“Sec. 701. Designation of files by the Director of Central Intelligence as exempt  
from search, review, publication, or disclosure.”

5 SEC. 4. The amendments made by section 3 shall be  
6 effective upon enactment of this Act and shall apply with  
7 respect to any request for records, whether or not such re-  
8 quest was made prior to such enactment, and shall apply to  
9 all cases and proceedings pending before a court of the  
10 United States on the date of such enactment.

Passed the Senate November 17 (legislative day,  
November 14), 1983.

Attest: **WILLIAM F. HILDENBRAND,**  
*Secretary.*

98TH CONGRESS  
1ST SESSION

# H. R. 3460

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1983

Mr. MAZZOLI introduced the following bill; which was referred jointly to the Permanent Select Committee on Intelligence and the Committee on Government Operations

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## A BILL

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1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Intelligence Information  
4       Act of 1983".

5       SEC. 2. (a) The National Security Act of 1947 is  
6       amended by adding at the end thereof the following new title:

1 "TITLE VII—RELEASE OF REQUESTED INFORMA-  
2 TION TO THE PUBLIC BY THE CENTRAL IN-  
3 TELLIGENCE AGENCY

4 EXEMPTION OF CERTAIN OPERATIONAL FILES FROM  
5 SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE

6 "SEC. 701. (a) Operational files located in the Director-  
7 ate of Operations, Directorate for Science and Technology,  
8 and Office of Security of the Central Intelligence Agency  
9 shall be exempted from the provisions of the Freedom of In-  
10 formation Act which require publication or disclosure, or  
11 search or review in connection therewith.

12 "(b) Subsection (a) of this section shall not prevent the  
13 search and review of operational files for information con-  
14 cerning—

15 "(1) United States citizens or aliens lawfully ad-  
16 mitted for permanent residence who have requested in-  
17 formation on themselves pursuant to the provisions of  
18 the Freedom of Information Act (5 U.S.C. 552);

19 "(2) any special activity the existence of which is  
20 not exempt from disclosure under the provisions of the  
21 Freedom of Information Act;

22 "(3) the subject of an investigation by the intelli-  
23 gence committees of the Congress, the Intelligence  
24 Oversight Board, the Office of General Counsel of the  
25 Central Intelligence Agency, the Office of Inspector

1 General of the Central Intelligence Agency, or the  
2 Office of the Director of Central Intelligence for any  
3 impropriety, or violation of law, Executive order, or  
4 Presidential directive in the conduct of an intelligence  
5 activity.

6 “(c) The provisions of subsection (a) of this section shall  
7 not be superseded except by a provision of law which is en-  
8 acted after the date of enactment of subsection (a), and which  
9 specifically cites and repeals or modifies its provisions.

10 “(d) For the purposes of this title the term ‘operational  
11 files’ means those files which document—

12 “(1) the means by which foreign intelligence infor-  
13 mation, counterintelligence information, or counterter-  
14 rorism information is collected through scientific and  
15 technical systems;

16 “(2) foreign intelligence operations, counterintelli-  
17 gence operations, or counterterrorism operations;

18 “(3) investigations conducted to determine the  
19 suitability of potential foreign intelligence sources,  
20 counterintelligence sources, or counterterrorism  
21 sources; or

22 “(4) intelligence or security liaison arrangements  
23 or information exchanges with foreign governments or  
24 their intelligence or security services.

1       “(e)(1) Nonoperational files which contain information  
2 derived or disseminated from operational files shall be subject  
3 to search and review.

4       “(2) The inclusion of information from operational files  
5 in nonoperational files shall not affect the exemption under  
6 subsection (a) of this section of the originating operational  
7 files from search, review, publication, or disclosure.”.

8       (b) The table of contents at the beginning of such Act is  
9 amended by adding at the end thereof the following:

“TITLE VII—RELEASE OF REQUESTED INFORMATION TO THE PUBLIC BY  
THE CENTRAL INTELLIGENCE AGENCY

“Sec. 701. Exemption of certain operational files from search, review, publication, or  
disclosure.”.

10       SEC. 3. The amendments made by section 2 shall be  
11 effective upon enactment of this Act and shall apply with  
12 respect to any requests for records, whether or not such re-  
13 quest was made prior to such enactment, and shall apply to  
14 all cases and proceedings pending before a court of the  
15 United States on the date of such enactment.

○